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10/579,240	07/10/2006	Thomas Richard Vitton	0595-1070	7821
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EXAMINER				
PANI, JOHN				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,240

Applicant(s)

RICHARD VITTON, THOMAS

Examiner

JOHN PANI

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 8/15/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (Claims 1-25) in the reply filed on 1/16/2009 is acknowledged. Applicant's election without traverse of Species C (Claims 1-3 and 6-25) in the reply filed on 5/13/2009 is acknowledged. Applicant asserts that claims 6 and 7 are part of Species C, however, Examiner asserts that in light of the specification (pg. 4 lines 3-8), the term "brake" is interpreted as being an electrical or hydraulic brake; i.e. an alternate species than that of the mechanical abutments of elected Species C. Therefore, Claims 4-7 have been withdrawn from further consideration as being drawn to a non-elected species.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8, 10, 16 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In reference to Claim 16

Claim 16 recites the limitation "the angle" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In reference to Claim 25

Claim 25 recites the limitation "the middle" in line 2. There is insufficient antecedent basis for this limitation in the claim. Additionally, line 3 recites "its convex portion". It is unclear which prior structure "its" refers to.

In reference to Claims 8 and 10

The claim limitation "brake means" uses the phrase "means for" or "step for" (at least as defined in claim 1), but it is modified (in claims 8 and 10) by some structure, material, or acts recited in the claim. It is unclear whether the recited structure, material, or acts are sufficient for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph, because it is unclear whether the "mechanical abutment" alone would be capable of "suddenly stopping" the arcs.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that the phrase "means for" or "step for" is clearly **not** modified by sufficient structure, material, or acts for performing the claimed function.

If applicant does **not** wish to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to amend the claim so that it will clearly not be a means (or step) plus function limitation (e.g., deleting the phrase "means for" or "step for").

35 USC § 112, 6th paragraph

4. Independent claim 1 includes the limitation "means for stopping said rotary movement suddenly." Because the limitation uses the phrase "means for" modified by a

functional language is not modified by structure sufficient for achieving the specified function, it has been presumed that the Applicant is invoking 35 USC § 112, 6th paragraph. Therefore, regarding claims 1-3 and 13-25, "means for stopping said rotary movement suddenly" has been interpreted as including motors, mechanical abutments, hydraulic or electrical brakes, or art recognized equivalents. Claims 9, 11, and 12 have been interpreted as including sufficient structure and therefore are not interpreted as invoking 35 USC § 112, 6th.

5. Claim 19 includes the limitation "first locking means for locking the primary arc relative to the stationary column." Because the limitation uses the phrase "means for" modified by a functional language is not modified by structure sufficient for achieving the specified function, it has been presumed that the Applicant is invoking 35 USC § 112, 6th paragraph. Therefore, regarding claim 19, the limitation "first locking means for locking the primary arc relative to the stationary column" has been interpreted as a structure including an orifice in a plate located below the primary arc and a finger attached to the primary arc which can be moved using a handle into the orifice to lock the primary arc.

6. Claim 20 includes the limitation "second locking means for locking the secondary arc in a plurality of positions relative to the primary arc". Because the limitation uses the phrase "means for" modified by a functional language is not modified by structure sufficient for achieving the specified function, it has been presumed that the Applicant is invoking 35 USC § 112, 6th paragraph. Therefore, regarding claim 20, the limitation "second locking means for locking the secondary arc in a plurality of positions relative to

the primary arc” has been interpreted as a structure including a finger attached to the secondary arc that can be inserted in an orifice in an end of the primary arc.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 18, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,759,107 to Nagel (“Nagel”).

9. Nagel teaches:

In reference to Claim 1

A medical examination chair (2, could be used for medical examination) for seating and moving a patient in three substantially perpendicular planes over a large amplitude, said medical examination chair comprising a primary arc (4) connected to a stationary column (8a) via a horizontal shaft (see Fig. 1) that constitutes a first axis of rotation, there being a second axis of rotation substantially perpendicular to the first axis of rotation that passes through first and second ends of said primary arc, said medical examination chair including a secondary arc (6) that is provided with a seat (30) and that is arranged inside said primary arc, being secured via third and fourth ends to said first and second ends respectively via an upper shaft and a bottom shaft, said primary and secondary arcs being suitable for performing rotary movement about said first and

second axes of rotation respectively, said medical examination chair further including brake means for stopping said rotary movement suddenly (col. 4 line 56 – col. 5 line 13).

In reference to Claim 2

A medical examination chair according to claim 1 (see above) including a first motor (40) for setting said primary arc into rotation about said first axis of rotation

In reference to Claim 3

A medical examination chair according to claim 1 (see above) including a second motor (24) for setting said secondary arc into rotation about said second axis of rotation.

In reference to Claim 18

A medical examination chair according to claim 1 (see above) including patient restraining means (28, 29).

In reference to Claim 24

A medical examination chair according to claim 1 (see above) including a control and management member (see col. 4 line 57—col. 5 line 13).

In reference to Claim 25

A medical examination chair according to claim 1 (see above) wherein said primary arc is connected to said horizontal shaft via the middle of its convex portion (see Fig. 1).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8, 10, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of US Pat. No. 5,046,721 to Altare ("Altare").

In reference to Claim 8

Nagel teaches the device of claim 1 (see above) but does not explicitly teach brake means that include a first mechanical abutment for suddenly stopping said primary arc relative to said stationary column. Altare teaches a human gyroscope in which a mechanical abutment (85) is used to lock the rings and frame together when not being used (Figs. 1 and 5 and col. 4 lines 38-55). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by including a lock bar on a portion of the frame (for example 10) in order to lock the rings and frame together for storage as taught by Altare. This lock bar would be capable of suddenly stopping 4 relative to 8.

In reference to Claim 10

Nagel teaches the device of claim 1 (see above) but does not explicitly teach brake means that include a second mechanical abutment for suddenly stopping said secondary arc relative to said primary arc. Altare teaches a human gyroscope in which a brake (200) including a mechanical abutment (208) is used to lock rings together so

the user can safely mount or exit the device (col. 6 lines 8-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel by including a braking means such as that taught by Altare on the inner ring so the user could safely mount or exit the device as taught by Altare. At least 208 could be used to stop the arcs' relative movement.

In reference to Claim 19

Nagel teaches the device of claim 1 (see above), but does not explicitly teach a first locking means for locking the primary arc relative to the stationary column (interpreted herein as detailed above). Altare teaches a human gyroscope which includes a means (85) for locking a primary arc relative to the frame for storage. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by including a means for locking the arc to the frame for storage purposes as taught by Altare. Altare further teaches a means (200) for locking two arcs together in which a pin (208) with a handle (206) fits into a plate (210, 212). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel in view of Altare by using a mechanism similar to (200) in order to lock the outer arc to the frame, as this simple substitution of one method for fixing a ring to another structure would predictably result in stopping relative movement as taught and motivated by Altare.

In reference to Claim 20

Nagel teaches the device of claim 1 (see above) but does not teach a second locking means for locking the secondary arc in a plurality of positions relative to the

primary arc. Altare teaches a human gyroscope which includes means (200) for locking the secondary arc (180) to a primary arc (190) which includes a pin (208) with a handle (206) which fits into a hole in a plate (210 or 212). This allows the arcs to be linked together to facilitate safe mounting or exit of the device (col. 6 lines 8-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel by including a brake means including a pin with handle attached to the inner arc and a hole in the outer arc so that the user could safely mount and exit the device as taught by Altare.

12. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel as applied to claim 1 above, and further in view of US Pat. No. 4,402,500 to Coles ("Coles").

Nagel teaches the device of claim 1 (see above) but does not explicitly teach the brake means includes a mechanical abutment for suddenly stopping said primary arc relative to the stationary column, the mechanical abutment placed on one lateral side of said stationary column and provided with a ring and a damper, said ring cooperating with a tooth of catch means arranged on the primary arc.

Coles teaches a gyroscopic device which includes a mechanical abutment for suddenly stopping said primary arc (15) relative to a stationary column (12), the mechanical abutment (38, 40) placed on one lateral side of said stationary column and provided with a ring (38) and a damper (40 could act as a shock absorber), said ring cooperating with a tooth (37) of catch means arranged on the primary arc (see Fig. 7).

This system allows the operator to manually adjusting the speed of the ring about its horizontal axis (see col. 4 lines 25-40). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Nagel by including a similar braking system so the operator could adjust the speed of the ring about its horizontal axis, for example in case other braking was not working. Depending on the speed of the device, the stop could be sudden, particularly if the speed was not great to begin with.

13. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel in view of Altare as applied to claim 10 above, and further in view of US Pat. No. 2,832,245 to Burrows ("Burrows").

In reference to Claim 11

Nagel in view of Altare teaches the device of claim 10 (see above) and Altare teaches the second mechanical abutment is provided with at least one hook (210) arranged on the first end of the primary arc, said hook cooperating with stop means (208) disposed on the third end of the secondary arc (see Fig. 7). However, Altare does not explicitly disclose a damper on the first end of the primary arc. Burrows teaches a socket which is lined with rubber in order to better grip rods (col. 1 lines 60-63). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel in view of Altare by lining 210 with rubber so it would more easily grip rod 208 as taught by Burrows.

In reference to Claim 12

Nagel in view of Altare and Burrows teach the device of claim 11 (see above) and Altare teaches the stop means is retractable (col. 6 lines 59-65).

14. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel as applied to claim 1 above, and further in view of US Pat. No. 3,774,963 to Lowe ("Lowe").

Nagel teaches the device of claim 1 (see above) but does not explicitly teach that the seat position can be adjusted along the second axis of rotation. Lowe teaches a vehicle seat in which the seat height can be adjusted to allow the seat to conform to various users (col. 3-4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by making the seat height adjustable so the device could conform to multiple users as taught by Lowe.

15. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel as applied to claim 1 above, and further in view of US Pat. No. 3,343,875 to Ferrara ("Ferrara").

Nagel teaches the device of claim 1 (see above) but does not explicitly teach that the seat back is adjustable in translation along said second axis of rotation. Ferrara teaches a vehicle seat in which the seat back can be adjusted in a vertical direction to allow it to conform to multiple users (col. 2-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by making the seat back height adjustable so the device could be used by people of various sizes as taught by Ferrara.

16. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel as applied to claim 1 above, and further in view of US Pat. No. 6,264,278 to Weimer et al. ("Weimer").

Nagel teaches the device of claim 1 but does not explicitly teach an adjustable foot rest. Weimer teaches a vehicle seat with a foot rest that is adjustable in height and angle (col. 3-4) so the device can be comfortably used by people of varying sizes. The foot rest increases circulation to the feet compared to letting the feet dangle. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by including an footrest adjustable in height and angle so the user would have increased circulation compared with unsupported feet, and so the device could be conformed to various sized users as taught by Weimer.

17. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nagel as applied to claim 1 above, and further in view of US Pat. No. 5,052,754 to Chinomi ("Chinomi").

Nagel teaches the device of claim 1 (see above) but does not teach a headrest that is tiltable and adjustable in translation along said first and second axes of rotation. Chinomi teaches a vehicle head rest in which the device is tiltable and adjustable in translation vertically and horizontally (see Figs. 1-9 and col. 2-5) for increased comfort. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Nagel by including a headrest that was tiltable

and adjustable in translation vertically and horizontally in order to increase user comfort as taught by Chinomi.

18. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,800,062 to Epley ("Epley") in view of Nagel.

Epley teaches a medical examination chair (see Figs. 2-3 and at least col. 10 lines 9-30) which is rotatable about a horizontal axis and vertical axis. Epley does not explicitly detail the structure of the chair portion but notes that other designs which can allow rotation of the user about axes could be used. Nagel teaches the device of claim 1 (see above). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the medical examination chair of Epley by making it with the arcs and columns in a configuration such as that taught by Nagel, as this simple substitution of one device design for another would predictably result in orienting a user about multiple axes as taught by both Epley and Nagel. Epley teaches the chair includes at least two position sensors (at least cameras 36 and 38 would sense the position of the various details in their field of vision); at least two movement sensors (col. 11 lines 20-30); and a videonystagmoscope system (col. 12 lines 1-14).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JP 7/1/09

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736